courts in this country,[7] is based on the failure of the opponent to object to the introduction of the incompetent evidence in the first instance. Because of this he cannot later maintain that the original evidence was such a wrong that the party which offered it will be now estopped to object to the introduction of similar evidence.

Precisely to the contrary is the rule in some other courts, which hold that the opponent may resort to similar inadmissible evidence. The adoption of this rule is also based on a waiver. By the introduction of the first incompetent evidence, the offeror waives the right to object to the introduction of that class of facts in the future. "Strange cattle have wandered through a gap made by himself, he cannot complain." [8] This rule is supported by much authority.[9]

The third rule, intermediate between the other two, is the one laid down in the *Graham* case, *supra*. As above noted, the right is conceded to the opponent to introduce immaterial curative evidence in rebuttal when plain and unfair moral prejudice would otherwise have inured against him. This rule has some authority in its support.[10]

By the adoption of the third rule, the Virginia court, it would seem, has established the more equitable doctrine. By the first rule above mentioned, any prejudicial testimony is left undisturbed to have its ultimate effect. The second rule is too broad, allowing unprejudicial and trivial facts to be rebutted and thereby delaying the progress of the trial. The third rule does away with the objections as offered to the other two and is to be commended for its aid in bringing about a speedier trial as well as in removing unfair prejudice which cannot be overcome or effaced by subsequent orders of the court directing that such prejudicial facts be stricken out and disregarded.

R. C. S.

CORPORATIONS—SUBSCRIPTIONS TO CAPITAL STOCK PAYABLE OTHERWISE THAN BY MONEY—VA. CODE, § 3788.—The General

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[7] Stapleton *v.* Monroe, 111 Ga. 848, 36 S. E. 428; Phelps *v.* Hunt, 43 Conn. 194, 199; Baltimore and S. R. Co. *v.* Woodruff, 4 Md. 242, 255; Stringer *v.* Young's Lessee, 3 Pet. 336, 337 (intimating that the rule might be otherwise for highly prejudicial testimony); and Virginia cases cited *supra*.

[8] Sisler *v.* Shaffer, 43 W. Va. 769, 28 S. E. 721.

[9] Mobile and B. R. Co. *v.* Ladd, 92 Ala. 287, 9 So. 169; Frost *v.* Rosencrans, 66 Iowa 405, 23 N. W. 895; People *v.* Buchanan, 145 N. Y. 1, 39 N. E. 846, 853; Sherwood *v.* Titman, 55 Pa. St. 77, 80. See Perkins *v.* Haywood, 124 Ind. 449, 24 N. E. 1033.

[10] Mowry *v.* Smith, 9 All. (Mass.) 67; Parker *v.* Dudley, 118 Mass. 602 (denying the opponent a fixed right to counter evidence; limiting such admission to the discretion of the trial court); Stringer *v.* Marshall, 3 Pet. 320, 337 (Dictum. Indicating such a holding if question properly presented); Lytle *v.* Bond, 40 Vt. 618; Sisler *v.* Shaffer, *supra;* Graham *v.* Commonwealth, *supra.*

Assembly, in enacting the Code of 1919, incorporated therein as § 3788 the provision of Acts, 1902-3-4, p. 437, ch. 5, § 9 (§ 1105e (9) of Pollard's Code of 1904). Unfortunately the revisors did not see fit to modify this section which provides, in substance, as follows:—that subscriptions to capital stock of any corporation may be paid in money, land or other property, real or personal, leases, options, mines, mineral rights, patent rights, rights of way or other rights or easements, contracts, labor or service, and that there shall be no individual liability on any subscription beyond the obligation of the subscriber to comply with such terms as he may have agreed to in his contract of subscription, provided that before making an issue of its stocks a financial plan be filed by the corporation with the State Corporation Commission, setting forth the basis upon which the stock is issued, and where such plan includes labor or services or property other than money, such labor, services or property shall be accurately described and their value set forth by the directors of the corporation.

Such a provision, with its unprecedented liberality to corporations, and its broad terms, freeing subscribers from any further liability on their subscription save that of the original contract, is a wide departure from the settled and more salutary rule of the common law, under which the capital stock is looked to as the basis of credit of the corporation, persons dealing with the corporation having a right to assume that the stock has been actually paid in, or may be reached for corporate debts.[1]

Any attempt on the part of the corporation to issue its stock at a price less than the actual value, or for property which is not at a fair valuation equal to the value of the shares, is discountenanced and the general trend of authority is to hold the subscriber liable to the full value of the stock subscribed, despite the good faith of any arrangement that would have allowed the substitution of property or services of a less value.[2] In States where property, or services, or other consideration is allowed to take the place of money as payment for the capital stock, it is generally held that such property or service must not be regarded as payment except to the extent of the true value of the property.[3]

It is the natural result of a departure from this sound policy so radical as is the one countenanced under § 3788, that the creditors of a corporation should be misguided and left in the dark as to the real financial status of the corporation. The financial plan as it is required to be deposited with the State Corporation Commission may be vague and indefinite and ill afford the pro-

[1] Utica Fire Alarm Tel. Co. *v.* Waggoner Co., 166 Mich. 618, 132 N. W. 502; First Nat. Bank *v.* Northup, 82 Kan. 638, 109 Pac. 672; Johns *v.* Clother, 78 Wash. 602, 139 Pac. 755.

[2] Cases cited, *supra.*

[3] Libby *v.* Tobey, 82 Me. 397, 19 Atl. 904; see Peck *v.* Coalfield, 11 Ill. App. 88; Liebke *v.* Knapp, 79 Mo. 22.

spective creditor the information which he may seek. He is in no position to ascertain the actual value of an option or easement or right of way, which by the plan is stated to represent a large portion of the capital stock. The whole scheme of the incorporation law is designed to relieve a stockholder from *general* liability for debts of the concern and to limit such liability to that which he has invested in the concern. But to offset this limited liability, a fund was created to be available to creditors' claims. This fund is represented by the capital stock. Any laxity which so modifies the law as to render this one reserve insecure and indefinite attacks the basic principle of corporate existence and places those dealing with such concerns in a precarious condition.

The question was squarely presented to the Virginia Court in *Monk* v. *Barnett.*[4] Here the appellants sought to enforce a mechanic's lien and to hold subscribers to capital stock in a certain corporation liable up to the full extent of the capital as represented. The stockholders, who were also the incorporators, had issued all of the $40,000 of capital stock to themselves in return for certain rights, options and contracts. In the financial plan as filed with the State Corporation Commission the rights, options and contracts in question, admitted to be worth only $4,000, were vaguely described and represented as being given in consideration of $40,000 of fully paid capital stock to them issued. Yet under the statute the court was forced to deny the appeal and to hold that the plan as presented sufficed in *form,* though not complying with the spirit of the law. In so deciding, Cardwell, J., said:

> "By the adoption of our present Constitution and the enactment of statutes pursuant thereto, relating to issue of stocks and bonds by corporations, the policy of granting charters of incorporation to almost every conceivable business undertaking within the State was inaugurated, and, though the policy may be fraught with ever so many possibilities—indeed, probabilities—of fraud and imposition upon individuals, firms or other corporations dealing with or becoming creditors of a corporation chartered in the State, the courts, in absence of the charge and proof of fraud in the obtaining of the charter, or the organization of the corporation, or the issuing of its stock, are powerless to prevent or to redress such wrong or impositions."

It is regrettable that our Code has not had incorporated into this section a provision that would insure the payment of the value of the capital stock in full, whether it be in money or in property, service or labor, the fair value of which must equal the value of the stock in question.

I. G. C.

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[4] 113 Va. 635, 75 S. E. 185.